

Clearinghouse Rule 24-069

STATE OF WISCONSIN
DEPARTMENT OF HEALTH SERVICES
PETITION AND ORDER TO REPEAL UNAUTHORIZED RULES

I. STATEMENT OF PETITION

The Department of Health Services (“the Department”) petitions the Joint Committee for Review of Administrative Rules to repeal rules the department has determined to be unauthorized, in accordance with s. 227.26 (4), Stats. Specifically, the Department proposes to **repeal** DHS 10.42 (3) (b), (d) 1. and (8); **consolidate, renumber, and amend** DHS 10.42 (d) (intro.) and 2.; and **amend** DHS 10.42 (2) (a) and (4), relating to removing references to long-term care advisory committees for certifying care management organizations under the family care benefit following 2019 Wis. Act 9 and 2023 Wis. Act 259.

II. ANALYSIS

A. Statutes that the proposed rule interprets:

References to “regional long-term care advisory committees” (“RLTCACs”) in s. DHS 10.42 interpreted s. 46.281 (1n) (d), Stats. (2017–18), and s. 46.2825, Stats. (2017–18) to require rules with respect to RLTCACs reviewing and advising on certification and contracting decisions for organizations seeking to provide services under the family care benefit.

B. Statutes that authorize promulgation:

Section DHS 10.42 relates to certification of care management organizations (“CMOs”) under the family care benefit. Rules are authorized under s. 46.284 (3), Stats.

C. Related statutes:

Sections 46.275, 26.277, and 46.278, Stats.

D. Related rule/s:

Not applicable.

E. Explanation of the agency's authority to promulgate the proposed rule :

Family care is a Medicaid benefit which helps families arrange for appropriate long-term care services for older family members and adults with physical or developmental disabilities. Family care prioritizes providing services to help members live in a home setting when possible. Sections 46.281 (1n) (b) 1., 46.288, and 50.02 (2) (d), Stats., direct the Department to create rules to administer the family care program. The rules include certification requirements and performance standards for providers, care management organizations and resource centers, financial eligibility criteria, and cost sharing requirements.

Sections 46.281 (1n) (d) (2017-18) and 46.2825 (2017-18), Stats., required that the Department establish RLTCACs to “[e]valuate the performance of care management organizations and entities that operate a program . . . in the [RLTCAC]’s region with respect to responsiveness to recipients of their services, fostering choices for recipients, and other issues affecting recipients . . . and make recommendations based on the evaluation to the department and to the care management organizations and entities, as appropriate.” To effectuate ss. 46.281 (1n) (d) and 46.2825, Stats., the Department included the following provisions in s. DHS 10.42, relating to CMO certification and contracting:

- Section DHS 10.42 (2) (a) requires that an organization seeking certification as a CMO must submit to the Department “comments it has obtained from [the RLTCAC] in the area it proposes to serve” with all other required certification paperwork.

- Section DHS 10.42 (3) provides that the Department may only contract with an organization to act as a CMO if the following occur:
 - “The [RLTCAC] and individuals from the local target population that the organization proposes to serve have assisted the department in its review and evaluation of all applications of organizations proposing to serve a geographic area.” Section DHS 10.42 (3) (b).
 - The Department has considered the advice of a RLTCAC for that area in order to determine that the organization’s “services are needed to provide sufficient access to the family care benefit” in that area. Section DHS 10.42 (3) (c).
 - “The county and the [RLTCAC] agree in writing” that an additional CMO is necessary or desirable in that area. Section DHS 10.42 (3) (d) 1.
- Section DHS 10.42 (4) provides that proposals for CMO contracts shall be solicited under a “competitive sealed process under s. 16.75 (2m), Stats., and after consulting with the [RLTCAC] for the county or counties”
- Section DHS 10.42 (8) requires that the Department provide copies of any CMO contract to the applicable RLTCAC, and that the Department consult the RLTCAC before modifying any CMO contracts.

F. Brief summary of the proposed rule :

Sections 46.281 (1n) (d) (2017-18) and 46.2825 (2017-18) were repealed by 2019 Wis. Act 9 ss. 462 and 464, and RLTCACs no longer exist. 2023 Wis. Act 259 removed other references to RLTCACs in s. 46.283 (6) (b) 4. And 5., and the Law Revision Committee noted that “there are no active committees.”

Because the requirement to create RLTCACs and the designated functions of those committees no longer exist in statute, the above-cited provisions in s. DHS 10.42 that refer to RLTCACs are no longer authorized, and they meet the definition of “unauthorized rules” under s. 227.26 (4) (a), Stats. Accordingly, the Department proposes to remove all references to RLTCACs in s. DHS 10.42.

G. Electronic mail address and telephone number of agency contact person:

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III. PROPOSED RULE ORDER

SECTION 1. DHS 10.42 (2) (a) is amended to read:

DHS 10.42 (2) (a) To obtain and retain certification, an organization shall submit all information and documentation required by the department, in a format prescribed by the department, ~~including comments it has obtained from each regional long term care advisory committee in the area it proposes to serve.~~ The department shall review and make a determination on the application within 90 calendar days of receipt of a complete application containing complete and accurate supporting documentation that the organization meets the standards under s. DHS 10.43. The department may conduct any necessary investigation to verify that the information submitted by the organization is accurate. The organization shall consent to disclosure by any third party of information the department determines is necessary to review the application.

SECTION 2. DHS 10.42 (3) (b) is repealed.

SECTION 3. DHS 10.42 (3) (d) (intro.) and 2. are consolidated, renumbered DHS 10.42 (3) (d), and amended to read:

DHS 10.42 (3) (d) Before January 1, 2003, the organization is a county or a family care district, unless ~~any of the following applies: 2.~~ The governing body of a tribe or band or the Great Lakes inter-tribal council, inc., elects to operate a care management organization within the area and is certified under sub. (2).

SECTION 4. DHS 10.42 (3) (d) 1. is repealed.

SECTION 5. DHS 10.42 (4) is amended to read:

DHS 10.42 (4) After December 31, 2003, the department may contract with counties, family care districts, the governing body of a tribe or band or the Great Lakes inter-tribal council, inc., or under a joint application of any of these, or with a private organization that has no significant connection to an entity that operates a resource center. Proposals for contracts under this subsection shall be solicited under a competitive sealed proposal process under s. 16.75 (2m), Stats., and, ~~after consulting with the regional long term care advisory committee for the county or counties,~~ the department shall evaluate the proposals primarily as to the quality of care that is proposed to be provided and certify those applicants that meet the requirements specified in s. 46.284 (2) and (3), Stats., and s. DHS 10.43. The department may select certified applicants for contract and contract with the selected applicants.

SECTION 6. DHS 10.42 (8) is repealed.

SECTION 7. EFFECTIVE DATE. The rules repealed in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

Signed:

Dated:

Kirsten Johnson, Secretary-designee
Wisconsin Department of Health Services
